IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

APPEAL NO.959 OF 1998
IN
WRIT PETITION NO.1134 OF 1998

Jokim Vincent Gomes,
(Since deceased) through his heirs and
legal representatives:
1(a) Veronic Jokim Gomes,
age 57 years.
1(b) Jude Jokim Gomes, age 34 years.
1(c) Domnic Jokim Gomes,
age 24 years,
Heirs and legal representatives
of the deceased appellant Jokim Gomes,
All Indian Inhabitants, residing at
Jokim Gomes House, Upper Pakhadi,
Kanjur Village, Bombay-400 042. ...Appellants.

Vs.

1. The State of Maharashtra.
2. The Deputy Collector and
Competent Authority, Topiwala
College Building, Mulund (West),
Bombay-400 080.
3. A.A. Mukundan,
adult, age not known.
4. Dhilomena Estibera,
adult age not known.
5. Mithalal Trivedi,
adult age not known.
6. Shashikant T. Nikam,
adult age not known.
7. Hubert C. D'Souza,
adult age not known.
8. Chaya Patil,
adult age not known.

9. S.J. Gupta,
adult age not known.
10. Margaret P. D'Souza,
adult age not known.
11. Josef D'Souza,
Since deceased through his
legal heirs:
11(a) Mrs. Sophia Joseph D'Souza.
11(b) Mr.Loyal Joseph D'Souza.
11(c) Miss Lolett Joseph D'Souza,
heirs and legal representatives
of the deceased Respondent No.11,
all adult, Indian Inhabitant,
residing at Gomes Chawl, Kanjur
Village, Kanjur (East),
Bombay-400 042.
12. Dinkar Bohrade,
adult age not known.
13. Y. Paniamma Felix,
adult age not known.
14. Asha Ramesh Borhade,
adult age not known.
15. Pushpalata V. Jadhav,
adult age not known.
16. D.N. Yadav,
adult age not known.
17. Julian Alphonse,
adult age not known.
18. Ramdas Baban Gadge,
adult age not known.
All residing at Gomes Colony
Chawl, Kanjur Village,
Kanjur (East), Bombay-400 042. ...Respondents.

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Smt.V. V. Thorat with Shri Divesh Chamboowala for the appellants.
Shri Pradeep Jadhav, AGP for Respondent Nos.1 and 2.
Shri Y. V. Divekar i/b. M/s. Divekar & Co. for respondent Nos.3 to

18.

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CORAM : R. M. S.KHANDEPARKAR &
DR.D.Y.CHANDRACHUD, JJ.

February 22, 2007.

JUDGMENT (PER DR. D.Y. CHANDRACHUD, J.):

The Appellant claims to be a lessee of a plot of land bearing Survey No.33, Hissa No.1 of village Kanjur in the Bombay Suburban District. The lands were, according to the Appellant, illegally trespassed upon by one Hansraj Shah who had constructed chawls thereon which were let out to 16 persons. On 30th October 1983, the Appellant instituted a suit in the City Civil Court,[1] for eviction against Hansraj Shah and the persons who were inducted by him. On 28th September 1990, an ex-parte decree was passed against the Defendants to the suit. Between April and June 1992, the execution of the decree was obstructed by persons who were inducted on the land; these persons, according to the Appellant, were trespassers. On 15th June 1992, the Appellant took out a Chamber Summons[2] before the City Civil Court, for the removal of the obstruction and other reliefs. In the

1 (BCCC Suit No.6350 of 1983)
2 (Chamber Summons No.728 of 1992)

meantime, in September 1992, the heirs of the original Second Defendant took out a Notice of Motion for setting aside the decree against them. On 12th March 1993, the decree was set aside only as against Defendant Nos.2A to 2E by the City Civil Court. On 14th March 1996, the Chamber Summons taken out by the Appellant for the removal of obstruction was made absolute by the City Civil Court, by directing the removal of the Defendants and obstructionists in execution of the decree. Thereafter, on 18th April 1996, a Chamber Summons was taken out by Respondent No.6 and others who were inducted on the land, praying that the decree and order passed in the earlier Chamber Summons were not binding or executable against them. No ad-interim relief having been granted by the City Civil Court, a revision was preferred before this Court in which the City Civil Court, was directed to dispose of the Chamber Summons expeditiously. The Chamber Summons was dismissed on 26th June 1996. Thereupon, a Review Petition was instituted before the City Civil Court, which was also dismissed on 3rd September 1996.

2. A writ of possession was issued by the City Civil Court on 21st September 1996. Against the order of the City Civil Court,

dismissing the Review Petition, a Civil Revision Application was filed before this Court which was dismissed on 9th October 1996. On 19th October 1996, a telegram was received by the Appellant requesting her not to execute the decree on the ground that certain prominent politicians had been approached in the matter. On 3rd March 1997, a Judge's Order was issued by the City Civil Court, for taking forcible possession of the premises with the assistance of Police, in execution of the decree.

3. On 6th March 1997, a declaration came to be issued by which the property was notified as a slum in exercise of the power conferred by Section 4 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971. The notification was published thereafter on 30th May 1997. In pursuance of the warrant of possession that was issued by the City Civil Court on 21st September 1996, an order was passed by the Court on 1st August 1997 directing the bailiff to take possession of the premises. The decree was executed on 15th October 1997 and the Appellant took possession of the suit premises whereupon the decree was marked satisfied.

4. An appeal was filed by Respondent Nos.3 to 18 before the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Tribunal on 18th October 1997 for the restoration of possession, which had been lost in execution of the decree of the civil court. Immediately upon the filing of the application, on the same day, the Tribunal passed an order ex-parte by which a mandatory direction came to be issued for the restoration of possession to Respondent Nos.3 to 18 with Police help. The order of the Tribunal was executed by dispossessing the Appellant from the occupation of the premises which she had obtained in pursuance of the decree of the City Civil Court. Some of the Respondents who had filed a Writ Petition under Article 226 of the Constitution before this Court against the order of the City Civil Court, dismissing their Review Petition, withdrew the Petition on 21st October 1997. The Appellant was deprived of the possession of the premises on the same evening with police assistance and Respondent Nos.3 to 18 were placed back in possession in pursuance of the order of the Slum Tribunal.

5. The Appellant thereupon instituted a petition under Article 226 of the Constitution before this Court to challenge the

order of the Slum Tribunal dated 18th October 1997. The Writ Petition was disposed of by a judgment and order dated 1st July 1998 of a Learned Single Judge of this Court. The Learned Single Judge held that the Maharashtra Slum Area (Improvement, Clearance and Redevelopment) Tribunal which was constituted under the provisions of the Act, had no jurisdiction to entertain an appeal, and to direct restoration of possession which had been taken in execution of a decree that was passed by the Civil Court of competent jurisdiction. The Learned Single Judge held that the Tribunal had jurisdiction to exercise only such powers as were conferred upon it by the Act. In the present case, it was found that the Tribunal had even without a notice, passed a mandatory order ex-parte, directing that the Appellant herein be removed from possession of premises which she had obtained in the execution of the decree of the City Civil Court. The order passed by the Tribunal was held to be completely without jurisdiction. At the same time, the Learned Single Judge did not allow the prayer of the Appellant herein, for the restoration of possession on the ground that the property had been declared as a slum and it was incumbent upon the Appellant to obtain prior permission of the Competent Authority for the execution of the decree. The

Competent Authority was called upon to decide an application seeking permission for the execution of the decree that may be filed by the Appellant, within the time schedule that the Court stipulated. The Appellant is before this Court in appeal against the order of the Learned Single Judge in so far as it declined to restore possession to the Appellant.

6. On behalf of the Appellant, the following submissions have been urged: (i) In the present case, the decree for possession was passed by a Court of competent jurisdiction after a long drawn litigation. The original Defendant to the suit had inducted persons during the pendency of the suit and all the legal remedies that were available to challenge the decree for possession were exhausted; (ii) The Slum Tribunal had no jurisdiction or power under the provisions of the Act, to dispossess the Appellant who had obtained possession in execution of a decree passed by the City Civil Court. The only option available to Respondent Nos.3 to 18 was to approach the Civil Court to have the decree set aside or to seek restitution once possession had been restored to the Appellant. The malafides on the part of the private Respondents is apparent from the circumstance that they

moved the Tribunal which was totally lacking in jurisdiction and obtained a mandatory ex-parte order against the Appellant, on the same day as the institution of the appeal; (iii) The decree in the present case was not a nullity and the Court which passed the decree had jurisdiction to do so. On the date of the institution of the suit in 1983, the property had not been declared as a slum and hence, Section22(1)(a) of the Act has no application. Assuming that the permission of the Competent Authority was required to execute the decree, that defect was curable. The warrant of possession in the present case was issued on 21st September 1996 before the area was declared as a slum. The declaration of the property as a slum was on 6th March 1997 which was published in May 1997. When possession was taken by the Appellant in execution of the decree on 15th October 1997, Writ Petition 1676 of 1997 filed by some of the private Respondents was pending before this Court. Despite this, Respondent Nos.3 to 18 moved a forum which had no jurisdiction whatsoever, and while taking possession, withdrew the Writ Petition filed before this Court; (iv) Though the Learned Single Judge held that the order of the Tribunal was without jurisdiction (a finding which is accepted by the Appellant), the order of the Learned Single Judge declining to

restore possession to the Appellant was manifestly in error. There is no question of the Appellant being required to take permission to execute the decree at that stage. Once the decree was executed, no decree remains that requires to be executed; (v) Section 22(1)(a) of the Act had no application because on the date of the institution of the suit, the area had not been declared as a slum. Section 22(1)(b) applies to a case in which the suit is instituted before the commencement of the Act of 1971. In the present case, inasmuch as the suit was instituted in 1983, which was after the commencement of the Act, the provisions of Section 22(1)(b) would have no application. In such a case, the requirement of obtaining the prior permission of the Competent Authority would not arise once, on the date of the institution of the suit, there was no declaration of the property as a slum area.

7. On the other hand, on behalf of the private Respondents (Respondent Nos.3 to 18), Counsel fairly conceded that the Slum Tribunal had absolutely no jurisdiction to order the restoration of possession to the Appellant. However, it was urged that in the present case, a wrong was committed by both the parties, in the first instance, by the Appellant by executing the decree passed by

the Civil Court without obtaining the permission of the Competent Authority. The submission of the Respondents was that the permission of the Competent Authority was required under Section 22(1)(b). Since that permission was not taken, it was appropriate on the part of the Learned Single Judge not to allow restoration of possession to the Appellant herein.

8. In assessing the rival submissions that have been urged on behalf of the parties, the admitted factual background of the case would need to be emphasized. The decree in the present case, was passed by the City Civil Court, on 28th September 1990 in a suit for possession which was instituted on 30th October 1983. Save and except for the original Second Defendant in whose case, the decree for possession was set aside, all the other Defendants to the suit had unsuccessfully exhausted the remedies open to them in law in order to challenge the decree. Notices of Motion, a Review Petition, a revision before this Court and eventually a Writ Petition, were all taken recourse to, in order to support a challenge to the legality of the decree. On the date when the suit was instituted, the property had not been declared as a slum. Section 22(1)(a) of the Act provides that notwithstanding

anything contained in any other law for the time being in force, no person shall, except with the previous permission in writing of the Competent Authority, institute, after the commencement of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971, any suit or proceedings for obtaining any decree or order of eviction of an occupier of a building or land in a slum area or for the recovery of arrears of rent or compensation. There is no dispute about the factual position that the land had not been declared as a slum on the date of the institution of the suit or until the date on which the decree was passed by the City Civil Court. The decree for possession was that of a competent Civil Court and, therefore, cannot possibly be discarded as a nullity. A warrant of possession was issued on 21st September 1996 which again was before the notification of the area as a slum was issued on 6th March 1997. In execution of the decree passed by the City Civil Court, and in pursuance of the warrant of possession, the Appellant obtained possession of the premises on 15th October 1997. At that point of time, it would be material to note, a Writ Petition filed under Article 226 of the Constitution (Writ Petition 1676 of 1997) was pending before this Court. The Writ Petition arose out of a dismissal of Review

Petition 12 of 1996 instituted by some of the private Respondents in order to question the correctness of an order passed by the City Civil Court, refusing to set aside the decree for possession. Instead of moving the Civil Court, on a grievance that the decree should not have been executed without the permission of the Competent Authority, Respondent Nos.3 to 18 chose to move the Slum Tribunal. The Tribunal is a creature of statute and is vested with certain specified adjudicatory powers by the provisions of the Act. Among them is a power under Section 4 to hear an appeal against the declaration of an area as a slum. The Learned Single Judge while noting the extent of the jurisdiction of the Tribunal, correctly came to the conclusion that the Tribunal has no jurisdiction whatsoever to entertain an application seeking the restoration of possession, where possession had been lost in execution of a decree of the Civil Court. The conduct of the private Respondents in moving the Tribunal which absolutely had no jurisdiction was wholly improper. The application before the Tribunal was filed on 18th October 1997 and on the same day, the Tribunal considered it appropriate to pass a mandatory ex-parte order for dispossession of the Appellant who had already taken possession in execution of the decree of the City Civil Court. On

behalf of the private Respondents, it has, in fact, been conceded before the Court that the Tribunal had no jurisdiction whatsoever to entertain the appeal.

9. The Learned Single Judge was, in these circumstances, not justified in not directing the restoration of possession to the Appellant. The Appellant, it may be noted, was deprived of possession with the aid of police help in pursuance of the directions issued by the Slum Tribunal. The direction of the Tribunal was wholly without jurisdiction and was a nullity in the eyes of law. The manner in which the Appellant has been deprived of possession in pursuance of the order of the Slum Tribunal leaves much to be desired and would be wholly disruptive of the rule of law. The Tribunal could not have issued a direction, the effect of which was to negate the decree of a competent Civil Court. On behalf of the Appellant, it has been sought to be submitted that Section 22(1)(b) of the Act would have no application to the facts of the present case. Section 22(1)(b) postulates the requirement of previous permission in writing of the Competent Authority "when any decree or order is obtained in any suit or proceedings instituted before such commencement for

eviction of an occupier of any building or land in such area or for the recovery of arrears of rent or compensation". The submission is that the word "such commencement" would refer to the commencement of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971, and the expression "such area" would denote the slum area. Hence, it was urged that Section 22(1)(b) applies to a situation where a suit was instituted prior to the enforcement of the Act and in which a decree or order is obtained in respect of an area which is comprised in a slum area. In the present case, Counsel submitted that the suit was admittedly instituted after the commencement of the Act and since on the date of the institution of the suit, no declaration had been issued, neither would the provisions of clause (a), nor the provisions of clause (b) be attracted. For the purposes of these proceedings, we are of the view that it is not necessary to express any view in regard to the interpretation of the provisions of clause (b) of Sub-section (1) of Section 22. For the purposes of the present case, it would suffice to note that the decree that held the field was a decree of the competent Civil Court. The decree was not a nullity and was not hit by Section 22(a)(a). Right from the institution of the suit, until the date of the decree, no declaration of the area as a slum had been

issued. If the contention of the private Respondents was that as a result of the subsequent declaration of the slum, permission of the Competent Authority was required, and it was not taken prior to the execution of the decree, it was open to the private Respondents to move the Civil Court under Order 21 Rule 106 of the Code of Civil Procedure, 1908, or to seek appropriate relief for the restoration of possession. Restoration of possession was, as we have noted, sought before the Tribunal which was completely lacking in jurisdiction. The order of the Slum Tribunal is a nullity. Since the Appellant has been deprived of possession in pursuance of an order which is patently without jurisdiction, we are of the view that the ends of justice do require that the Appellant should be restored with possession of the premises of which she obtained possession in execution of the decree of the City Civil Court.

10. In these circumstances, the appeal shall stand allowed. The order of the Learned Single Judge in so far as the Court declined to accept the prayer of the Appellant for the restoration of possession, shall stand set aside to that extent. The direction issued by the Learned Single Judge for the Appellant to move an application before the Competent Authority shall accordingly stand

quashed and set aside. The private Respondents (Respondent Nos.3 to 18) shall within a period of six weeks from today, restore possession to the Appellant of the premises of which they obtained possession in pursuance of the order of the Slum Tribunal dated 18th October 1997. However, this shall not preclude the private Respondents from taking recourse to their remedies as available in law.

11. The appeal shall accordingly stand disposed of in the aforesaid terms. There shall be no order as to costs.

(R. M. S.KHANDEPARKAR, J.)

(DR.D. Y. CHANDRACHUD, J.)